

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NM-401

Application of Frank and Judy Cole for an Amended)
Certificate of Public Good for a net metered wind)
turbine and photovoltaic system)

Order entered: 6/16/2011

I. INTRODUCTION

This case involves an application filed by Frank and Judy Cole ("Applicants"), on April 11, 2011, requesting an Amended Certificate of Public Good ("CPG"), pursuant to 30 V.S.A. §§ 219a and 248 and Vermont Public Service Board ("Board") Rule 5.100, for a net metering system. On April 9, 2008, the Board issued a CPG to the Applicants for a wind turbine system. On October 6, 2008, the Board approved an amendment to the CPG to reflect an increase in the wind turbine tower height. On December 9, 2009, the Board approved an amendment to the CPG for the addition of a photovoltaic system. On June 18, 2010, the Board approved an amendment to the CPG for the addition of a second photovoltaic system. The Applicants are now seeking to further amend the CPG for the relocation of the previously approved wind turbine.

Notice of the application has been sent to all parties as specified in the Board's Rule 5.100. The notice stated that any party wishing to submit comments or request a hearing in this matter needed to file comments with the Board within thirty (30) working days of the date that the notice of the application was sent.

On May 9, 2011, the Board received a letter from Matthew Daly, Esq., on behalf of William and Phyliss Bissonette, adjoining landowners to the Applicants, requesting a hearing in this matter.

No comments have been received from any other parties or interested persons.

The Board has reviewed the application and accompanying documents and agrees that, pursuant to 30 V.S.A. §§ 219a and 248 and the Board's Rule 5.100, an amended CPG should be issued without further investigation or hearing.

II. FINDINGS

Based upon the application and its accompanying documents, the Board makes the following findings in this matter.

1. The proposed net metering project is located on property owned by the Applicants and located at 5234 Dorset Street in Shelburne, Vermont. Application at Section 1.
2. The existing wind turbine is 122 feet tall with a rotor diameter of 14 feet and a capacity of 2.5 kW. The proposed amendment consists of relocating the wind turbine approximately 200 feet to the west of its current position. Application at Section 5.
3. The relocation will place the turbine over 500 feet away from all neighboring residences. Application at Section 5 and attachment.
4. Applicants have certified that the project is in compliance with all of the provisions of Sections 3 and 8 of the application. Based on these submissions, we conclude that the project does not raise a significant issue with respect to the environmental criteria of 30 V.S.A. § 248. Application at Sections 3 and 8.
5. Applicants have certified compliance with the insurance requirements as set forth in Section 3 of the application. Application at Section 3.

III. DISCUSSION AND CONCLUSION

Bissonettes' Comments

The Board has received comments from adjoining property owners, William and Phyliss Bissonette, stating that they "oppose the proposed new location of the subject wind turbine."¹ The Bissonettes also request a hearing to "raise and identify concerns with the proposed project."

Pursuant to Board Rule 5.109(A) the Board may hold a hearing for a net metering system when it determines that the system raises a substantive issue with respect to one or more of the criteria of 30 V.S.A. § 248. Pursuant to the Board's Order of April 19, 1999, in PSB Docket No. 6181, *"Investigation into the Use of a Net Metering System for the Purchase and Sale of Electricity from Small Electrical Generating Systems to and from Electric Companies,"* parties with objections or concerns must make a showing that the application raises a significant issue

1. Bissonette letter at 1.

with respect to one or more substantive criteria applicable to the proposed net metering system. Accordingly, the Net Metering Application Form states that persons requesting a hearing regarding a net metering project "must make a showing that the application raises a significant issue regarding one or more of the substantive criteria applicable to the proposed net metering system."²

Pursuant to 3 V.S.A. § 811, the Board has read the record, including correspondence from the Bissonettes, and we conclude that the Bissonettes have not shown that the project raises a significant issue with respect to the applicable criteria. The Bissonettes state that they are opposed to the relocation of the turbine; however, they have not explained why they are opposed and have not shown that the relocation of the turbine raises a significant issue under the applicable criteria.³ Consequently, because the Bissonettes have not shown that the project raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248, further proceedings, including hearings, in this matter are unnecessary.⁴

Noise Issues

On September 10, 2010, the Vermont Public Service Board ("Board") commenced an investigation in this docket, pursuant to 30 V.S.A. §§ 203, 208, 209, 219a and 248 and Vermont Public Service Board ("Board") Rule 5.100, in response to complaints of excessive noise generated by the turbine from adjoining landowners George Winfield and Nancy Herman.

A letter from the installer of the turbine, attached to the amended application filed on April 11, 2011, states that the proposed relocation of the turbine has been "mutually agreed upon" by the Applicants and the Winfield-Hermans as addressing the noise concerns regarding the project. The letter does not, however, indicate whether the underlying noise issues associated with the turbine design have been addressed. Consequently, while the relocation may address the concerns of the Winfield-Hermans, we also wish to ensure that the relocation of the turbine does not result in excessive noise for other neighbors. Therefore, we conclude that it is necessary and

2. State of Vermont Public Service Board Application for a Certificate of Public Good for Interconnected Net Metered Power Systems, at 1. As noted above, the adjoining landowners and other entities specified in Board Rule 5.100 received a copy of the application form for the proposed relocation of the wind turbine.

3. The site plan filed with the application indicates that the proposed relocation of the turbine does not appear to move the turbine any closer to the Bissonettes' property than the existing turbine site.

4. Our decision that further proceedings are unnecessary is consistent with prior decisions in similar cases where comments have failed to demonstrate that an application raises a significant issue. *See*, for example, CPG No. NM-1143, order issued 9/22/10 and CPG No. NM-1290, order issued 3/25/11.

appropriate to include a condition to protect against excessive noise levels as part of the CPG. The condition will require that noise from the turbine shall not increase the ambient sound level measured at the residence of any adjoining property owner by more than 10 decibels [dB(A)].⁵ This standard is based on the Massachusetts Department of Environmental Protection Noise Control Regulation, and its Noise Level Policy for implementing this policy.⁶

In Docket No. 6181,⁷ the Board developed a net metering program in accordance with the statutory requirements of 30 V.S.A. § 219a. This program was further refined by the Board with the adoption of Board Rule 5.100 on March 1, 2001. The goals of the Order and Rule are to encourage private investment in renewable energy resources, stimulate the economic growth of the state and enhance the continued diversification of energy sources used in Vermont. The standards and requirements adopted in the Order and Rule have been determined by the Board to protect public safety and system reliability.

Based upon the findings and evidence, and with the conditions set forth in the CPG, the proposed net metering project will be in compliance with the requirements of the Board's Order in Docket No. 6181 and Rule 5.100, the application does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248, and the proposed project will promote the general good of the state.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the net metering system, as amended and proposed in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 219a, and an Amended Certificate of Public Good to that effect shall be issued in this matter, pursuant to 30 V.S.A. §§ 219a and 248.

5. For purposes of this Order, the ambient sound level is considered to be the level that is exceeded 90% of the time that the noise measurements are taken.

6. See <http://www.mass.gov/dep/air/laws/noisepol.htm>.

7. *Investigation into the Use of A Net Metering System for the Purchase and Sale of Electricity from Small Electrical Generating Systems to and from Electric Companies*, Docket No. 6181, April 21, 1999.

DATED at Montpelier, Vermont, this 16th day of June, 2011.

s/ James Volz)

) PUBLIC SERVICE

s/ David C. Coen)

) BOARD

s/ John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

Filed: June 16, 2011

Attest: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.